

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES ALLEN KINNEY,

Petitioner,

v.

MACDUFFIE SETTER, et al.,

Respondents.

CASE NO. C13-0441-JCC

ORDER DENYING 28 U.S.C. § 2254
HABEAS PETITION AND
DISMISSING MATTER WITH
PREJUDICE

This matter comes before the Court on the Report and Recommendation of the Honorable Brian A. Tsuchida, U.S. Magistrate Judge, to deny Petitioner James Allen Kinney's 28 U.S.C. § 2254 petition for a writ of habeas corpus (Dkt. No. 7) and Kinney's objections thereto (Dkt. No. 9). Having thoroughly Kinney's § 2254 petition, the Report and Recommendation, Kinney's objections, and the balance of the record, the Court hereby DENIES Kinney's § 2254 petition for the reasons explained herein.

Judge Tsuchida recommends denying Kinney's § 2254 petition and dismissing this action with prejudice on three grounds: (1) the petition is untimely; (2) it alleges grounds for relief that are unexhausted and procedurally barred; and (3) it alleges grounds that fail to state a claim upon which relief may granted. The Court "shall make a de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1). Kinney has filed an eight-page "rebuttal" to the Report and Recommendation, along with exhibits purporting to show that his

signature on his guilty plea was forged. (Dkt. No. 9.) These filings do not constitute objections to the Report and Recommendation. Rather, they either reiterate the arguments Kinney already made in his § 2254 petition, raise new issues, or advance irrelevant or unintelligible arguments. *See Thomas v. Arn*, 474 U.S. 140, 147–48 (1985); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991); *VanDiver v. Martin*, 304 F. Supp. 2d 934, 937–38 (E.D. Mich. 2004); *Hau Minh Tran v. Frakes*, No. C11–0768–JCC, 2012 WL 1204637, at *1 (W.D. Wash. Apr. 10, 2012). Kinney’s objections do not put the Court on notice of any potential errors in the Report and Recommendation. The Court therefore finds and orders as follows:

1. The Report and Recommendation is ADOPTED;

2. Kinney’s § 2254 habeas petition is DENIED and this matter is DISMISSED with prejudice;

3. Kinney is DENIED issuance of a certificate of appealability;

4. Kinney’s application to proceed *in forma pauperis* (Dkt. No. 6) is STRICKEN as moot; and

5. The Clerk shall send a copy of this Order to the parties and to Judge Tsuchida.

DATED this 29th day of May 2013.

A handwritten signature in black ink, appearing to read "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE